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14 **UNITED STATES DISTRICT COURT**  
15 **EASTERN DISTRICT OF WASHINGTON**

16 NICHOLAS ROLOVICH,  
17  
18 Plaintiff,  
19 v.  
20 WASHINGTON STATE  
21 UNIVERSITY,  
22 Defendant.

No. 2:22-cv-00319-TOR

DEFENDANT'S COMBINED  
CROSS-MOTION FOR  
SUMMARY JUDGMENT AND  
RESPONSE TO PLAINTIFF'S  
MOTION FOR PARTIAL  
SUMMARY JUDGMENT

December 3, 2024  
Without Oral Argument

23  
24 DEF.'S COMBINED CROSS-MSJ & RESP.  
25 TO PLF.'S MOT. FOR PARTIAL SJ  
No. 2:22-cv-00319-TOR

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## I. INTRODUCTION

Throughout his adult life, Plaintiff Nicholas Rolovich has declined to receive vaccinations of any kind because of his preference for “holistic” medicine, his belief in his own “natural immunity,” and his concerns about vaccine safety. Consistent with this history, even at the height of the COVID-19 pandemic, Rolovich refused to comply with Defendant Washington State University’s (WSU) employee vaccination requirement—a choice that put others at risk. Then WSU’s head football coach, Rolovich’s job was dynamic and demanding, requiring near-constant engagement in person with hundreds (or more) of individuals every week. Relying on the authoritative public health guidance available at the time, WSU’s Athletics Department understood that allowing a college football coach to continue unvaccinated in his highly interpersonal position would have significantly increased the risk of him contracting COVID-19 and transmitting the virus to others. Thus, the Athletics Department denied Rolovich’s request for an accommodation that would have entitled him to remain in his head coaching job unvaccinated.

At the time of WSU’s decision, COVID-19 had already killed 750,409 Americans. The global death toll was nearly 5 million. Rolovich’s unvaccinated status posed a direct threat to the health and safety of the student-athletes and other employees he led and worked closely with every day. Unlike other WSU employees who received accommodations, Rolovich’s job was plainly not one that could be performed effectively via Zoom or in isolation.

For that reason and others, WSU is entitled to summary judgment on all Rolovich’s claims. First and foremost, WSU’s undue hardship defense to his claims



1 under Title VII, 42 U.S.C. § 2000e-2, and the Washington Law Against  
2 Discrimination (WLAD), RCW 49.60.180, is dispositive. WSU's two *unrebutted*  
3 scientific experts demonstrate that, in the relevant fall 2021 time period,  
4 unvaccinated individuals were more likely—by orders of magnitude—to contract  
5 and transmit COVID-19. Accordingly, both experts conclude, accommodating  
6 Rolovich would have significantly increased the risk of his contracting and  
7 spreading COVID-19 to others.

8 WSU's experts also confirm that this danger could not have been adequately  
9 reduced by masking, social distancing, or other mitigation measures. Not only are  
10 those measures less effective than vaccination, but Rolovich's testimony that he  
11 could not coach effectively while masking—as well as his well-documented history  
12 of flaunting and denigrating masking rules—show that he would not (or could not)  
13 have followed those measures. This public-health justification alone establishes  
14 WSU's undue hardship defense as a matter of law, as numerous courts have held in  
15 entering summary judgment on Title VII claims by unvaccinated employees whose  
16 jobs required regular in-person interaction—from firefighters to teachers to  
17 television actors. A football coach poses the same type of health and safety danger.

18 WSU's undue hardship defense is also supported by its *unrebutted* economic  
19 expert's finding that accommodating Rolovich—as well as seven unvaccinated  
20 assistant football coaches who also requested accommodations—would have cost  
21 WSU hundreds of thousands of dollars in separate travel arrangements alone. In  
22 addition, WSU would have faced losing millions more in revenue from games  
23 canceled due to an outbreak on the football team. Accommodating Rolovich would

1 also have damaged WSU's recruitment efforts, donation receipts, and reputation—  
2 all seriously jeopardizing the football program's long-term success.

3 Second, the undisputed record shows that Rolovich's "conscience"-based  
4 objection to COVID-19 vaccination—even if sincerely held—is not religious in  
5 nature, but is premised on his long-held (and secular) vaccine hesitancy and years-  
6 long consumption throughout the COVID-19 pandemic of anti-vaccine and anti-  
7 government literature and media. Numerous courts addressing similar anti-vaccine  
8 viewpoints have rejected plaintiffs' attempts to recast secular objections in religious  
9 terms, as Rolovich seeks to do here.

10 Rolovich's remaining claims fall with his Title VII and WLAD claims: since  
11 Rolovich was unvaccinated and not legally entitled to a religious accommodation  
12 from the vaccination requirement, he was ineligible to work for WSU and unable to  
13 fulfill his contractual obligations to the University, which properly terminated him  
14 for just cause. WSU therefore did not breach Rolovich's employment agreement or  
15 wrongfully withhold any wages from him. For those reasons and those explained  
16 below, the Court should deny Rolovich's Motion for Partial Summary Judgment  
17 (Partial MSJ), ECF No. 88, and enter judgment for WSU on all claims.

## 18 II. FACTUAL AND PROCEDURAL HISTORY

19 The evidence in support of this Motion is set forth in WSU's Statement of  
20 Material Facts Not in Dispute (SOMF) filed herewith. WSU also requests that the  
21 Court take judicial notice of basic facts regarding the COVID-19 pandemic. *See Fed.*  
22 *R. Evid. 201(b); Children's Health Defense v. Rutgers*, 93 F.4th 66, 71 (3d Cir.  
23 2024). A brief factual summary follows.

1 **A. The COVID-19 Pandemic in Washington and at WSU**

2 COVID-19 is a respiratory disease caused by a virus that is airborne, highly  
3 contagious, and can cause serious illness or death. *See* SOMF ¶¶ 12–17. On February  
4 29, 2020, Governor Jay Inslee proclaimed a state of emergency due to the COVID-  
5 19 pandemic. *Id.* ¶ 19.

6 Pursuant to a statewide “Stay Home” order in March 2020, WSU shifted  
7 operations so that almost all work and instruction were done remotely. *Id.* ¶¶ 20–22.  
8 The pandemic’s disruption was challenging for WSU, and its Athletics Department  
9 lost significant revenue from foregone ticket sales, parking and concessions, and  
10 tournament participation. *Id.* ¶¶ 25–33.

11 Although remote instruction continued during WSU’s 2020 fall semester,  
12 many students—including student-athletes—chose to live on campus. *Id.* ¶ 34. This  
13 caused several outbreaks during the 2020–21 school year, making WSU a major  
14 driver of Whitman County’s high COVID-19 case counts. *Id.* Because of an outbreak  
15 on the football team in fall 2020, WSU’s game against Stanford was canceled, as  
16 was the Apple Cup the following week. *Id.* ¶ 31. The football team was also  
17 connected to another major outbreak in March 2021. *Id.* ¶¶ 35–36.

18 **B. Rolovich’s Opposition to the COVID-19 Vaccines**

19 Rolovich was announced as WSU’s new head football coach in January 2020.  
20 *Id.* ¶ 9. Throughout the COVID-19 pandemic, he frequently opined that the virus did  
21 not present a significant public health risk and that the pandemic was part of a  
22 conspiracy between government officials and public figures like George Soros and  
23 Bill Gates. *Id.* ¶ 52. Soon after the FDA authorized the vaccines for emergency use

1 in late 2020 and early 2021, Rolovich began expressing doubts about their safety,  
2 efficacy, and regulatory approval processes. *Id.* Before August 17, 2021, however,  
3 none of Rolovich’s hundreds of text messages and emails about the COVID-19  
4 vaccines with friends, family members, and coworkers mentioned any religious  
5 objection to the vaccines. *Id.* ¶ 54.

6 Between April and June 2021, Rolovich spoke with other WSU employees  
7 about his opposition to the vaccines, including then-WSU Athletics Director Patrick  
8 Chun, then-Deputy Athletics Director Bryan Blair, and then-defensive coordinator  
9 Jake Dickert. *Id.* ¶¶ 53, 66, 71, 74–76. Rolovich expressed his fears of the vaccines’  
10 adverse health consequences and his doubts about their efficacy, but again, did not  
11 raise any religious objections in these discussions. *Id.* ¶¶ 54, 61–62, 66, 71.

12 On June 11, 2021, the Pac-12 conference announced that all football media  
13 day attendees would need to be vaccinated against COVID-19. *Id.* ¶¶ 72–74. On July  
14 21, Rolovich tweeted: “I have elected not to receive a COVID-19 vaccine for reasons  
15 which will remain private.” *Id.* ¶ 77–78. His announcement generated significant  
16 negative media attention nationally and locally. *Id.* ¶ 79. Hundreds of WSU alumni  
17 and donors wrote to express their disapproval of Rolovich’s position, and many  
18 threatened to withhold future donations. *Id.* ¶ 80. At the time, WSU’s policy required  
19 employees to be vaccinated against COVID-19 before the upcoming academic year  
20 unless they claimed an exemption for medical, religious, or “philosophical/personal”  
21 reasons. *Id.* ¶¶ 43, 47–49.

1 **C. The Delta Surge and Proclamation 21-14**

2 Rolovich's announcement in July 2021 coincided with the highly infectious  
3 "Delta variant" becoming the dominant COVID-19 strain. *Id.* ¶ 83. COVID-19 cases  
4 reached then-unprecedented levels, and hospitalizations and deaths also surged. *Id.*  
5 ¶¶ 84–86. According to contemporaneous CDC data, the vaccines proved highly  
6 effective at preventing the virus's spread and severe disease, particularly with the  
7 Delta variant. *Id.* ¶¶ 87–90.

8 On August 9, 2021, Governor Inslee issued Proclamation 21-14 (together with  
9 subsequent iterations, the Proclamation). *Id.* ¶ 92. The Proclamation initially  
10 prohibited healthcare workers and most state employees from working after October  
11 18, 2021, without being fully vaccinated against COVID-19, unless they had an  
12 approved accommodation for a religious or medical reason. *Id.* On August 20, the  
13 Governor extended the Proclamation to the education sector (including WSU). *Id.*  
14 ¶ 94. The Proclamation superseded WSU's policy which previously allowed  
15 exemptions for non-religious philosophical/personal reasons. *Id.* ¶ 95.

16 **D. Rolovich's Request for a Religious Accommodation**

17 On August 16, 2021, Chun and Blair informed Rolovich that the Proclamation  
18 would soon be extended to cover WSU, and that accommodations would be  
19 permitted for medical or religious reasons only. *Id.* ¶ 147. The next day, Rolovich's  
20 agent, Thayer Evans, sent him a template of a vaccine mandate religious exemption  
21 request from the website of the National Catholic Bioethics Center (NCBC). *Id.*  
22 ¶¶ 148–49. The NCBC exemption request template invoked the "Church's teaching"  
23 that a Catholic "must obey the judgment of his or her own informed and certain

1 conscience.” *Id.* Later that day, Rolovich spoke with Father Paul Heric, a Catholic  
2 priest he’d met a few weeks earlier. *Id.* ¶ 150. It was only then, Rolovich testified,  
3 that he first realized he had a “religious obligation as a Catholic to follow [his]  
4 conscience and decline to take a COVID vaccination.” *Id.* ¶ 150. A few days later,  
5 Evans wrote in a text message to Rolovich and his attorney: “Since Nick’s not going  
6 to get the shot and we can’t find a doctor to write him a note, I think [a religious  
7 exemption] is the best alternative strategy we have.” *Id.* ¶ 155.

8 On August 18, 2021, the Governor announced the extension of the  
9 Proclamation to educational workers. *Id.* ¶ 93. The following day, Rolovich  
10 informed Chun and Blair he would pursue a religious accommodation. *Id.* ¶¶ 151–  
11 53. On October 4, Rolovich emailed a religious exemption request to WSU’s Human  
12 Resource Services (HRS). *Id.* ¶ 158. The request was based on the NCBC template  
13 his agent had shared with him, which his attorney then edited. *Id.* ¶¶ 148–49, 156.  
14 Rolovich did not personally draft or edit his exemption request. *Id.* ¶ 157.

#### 15 **E. WSU Denies Rolovich’s Accommodation Request**

16 On October 6, 2021, HRS notified Chun and then-Deputy Athletics Director  
17 Anne McCoy that Rolovich’s exemption request “support[ed] the accommodation  
18 request based on a sincerely held religious belief.” *Id.* ¶ 160. HRS advised that it was  
19 the Athletics Department’s responsibility “to determine if the employee is able to  
20 perform essential functions of the position and meet the COVID-19 safety measures  
21 consistent with the recommendations of the state and protect the health and safety of  
22 the WSU community as part of this accommodation request.” *Id.* ¶¶ 161–62. In total,  
23 eight football coaches and staff sought religious accommodations. *Id.* ¶ 163.

1 Chun, McCoy, and Blair worked together to evaluate Rolovich and the other  
2 football employees' job duties, relying on public health data and guidance available  
3 at the time, to determine whether they could be accommodated without endangering  
4 others. *Id.* ¶¶ 164–67. The Athletics Department leadership also considered a memo  
5 prepared by WSU Environmental Health & Safety (EH&S) assessing the football  
6 employees' positions and identifying the minimum public health requirements that  
7 would have to be followed for them to continue working. *Id.* ¶¶ 170–81.

8 It is undisputed that the job of head football coach involves frequent in-person  
9 contacts and interactions with a wide range of individuals—including student-  
10 athletes, assistant coaches, other Athletics Department personnel, donors and  
11 boosters, and members of the media. *Id.* ¶ 8. It is also undisputed (or at least  
12 un rebutted) that, in fall 2021, unvaccinated persons posed a materially higher risk of  
13 contracting and transmitting COVID-19. *Id.* ¶¶ 194–95.

14 Thus, Chun ultimately determined—with McCoy and Blair's agreement—  
15 that Rolovich could not be accommodated without undue hardship to WSU. Chun  
16 set forth his reasoning in several memos to HRS, focusing on the increased risk that  
17 an unvaccinated football coach would pose of contracting and spreading COVID-19  
18 to others. *Id.* ¶¶ 168, 182. Chun also provided a memo to HRS explaining that  
19 “Rolovich has made several statements that cast doubt on his claimed sincerely held  
20 religious belief” against COVID-19 vaccination, including his long-expressed fears  
21 of the vaccines' potential adverse health effects. *Id.* ¶ 169.

22 On October 18, 2021, HRS informed Rolovich that his religious  
23 accommodation request was denied because WSU could not accommodate him



1 without experiencing an undue hardship. *Id.* ¶¶ 183–84. HRS also explained that,  
2 based on his past comments regarding vaccination and the timing of his  
3 accommodation request, WSU had reason to question whether Rolovich’s sincerely  
4 held religious beliefs conflicted with COVID-19 vaccination. *Id.* ¶ 185.

#### 5 **F. Rolovich’s Separation from WSU and Administrative Appeals**

6 Shortly thereafter, Chun and Blair delivered Rolovich a letter stating that  
7 WSU was terminating his employment for just cause pursuant to the terms of his  
8 employment contract. *Id.* ¶¶ 186–87. Through counsel, Rolovich submitted a  
9 detailed appeal to Chun. *Id.* ¶ 188. On November 12, 2021, Chun denied the appeal.  
10 *Id.* ¶ 189. On December 6, 2021, WSU President Kirk Schulz denied Rolovich’s  
11 second-level appeal, and his termination became final. *Id.* ¶¶ 191–92.

#### 12 **G. Procedural History**

13 The early procedural history of the case is set forth in WSU’s Motion to  
14 Dismiss (MTD), ECF No. 22 at 12. After the Court’s ruling, ECF No. 33, Rolovich  
15 filed a Second Amended Complaint (SAC), ECF No. 53. Four claims remain: Title  
16 VII, WLAD, breach of contract, and wage withholding.

### 17 **III. ARGUMENT**

#### 18 **A. Summary Judgment Standard**

19 Summary judgment is appropriate when no genuine issues of material fact exist  
20 and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a).  
21 Once the movant demonstrates the absence of a genuine issue of material fact, the  
22 opposing party must set forth specific facts showing a genuine issue. *Celotex Corp.*  
23



1 v. *Catrett*, 477 U.S. 317, 322–24 (1986). If the nonmoving party fails, “Rule 56(c)  
2 mandates the entry of summary judgment.” *Id.* at 322.

3 **B. WSU is Entitled to Summary Judgment on the Title VII and WLAD Claims**

4 **1. Title VII and WLAD standards**

5 To establish a prima facie case of failure to accommodate religion under Title  
6 VII, the plaintiff has the burden to show that “(1) a bona fide religious belief of the  
7 employee conflicted with an employment policy; (2) the employee informed the  
8 employer of the conflict; and (3) ‘the employer threatened him with or subjected him  
9 to discriminatory treatment, including discharge, because of his inability to fulfill  
10 the job requirements.’” ECF No. 33 at 8 (quoting *Heller v. EBB Auto Co.*, 8 F.3d  
11 1433, 1438 (9th Cir. 1993)). The standard under the WLAD is substantially similar.  
12 *See id.* at 12 (citing *Kumar v. Gate Gourmet, Inc.*, 325 P.3d 193 (Wash. 2014)); *see*  
13 *also Suarez v. State*, 552 P.3d 786, 795 (Wash. 2024).<sup>1</sup>

14 If the employee “establishe[s] a prima facie case, the burden shifts to the  
15 defendant to demonstrate ‘either that it initiated good faith efforts to accommodate  
16 reasonably the employee’s religious practices or that it could not reasonably  
17 accommodate the employee without undue hardship.’” ECF No. 33 at 9–10 (quoting  
18 *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 830 (9th Cir. 1999)).  
19  
20  
21

22 <sup>1</sup> For that reason, WSU addresses Rolovich’s Title VII and WLAD claims  
23 together, using “Title VII” to refer to both statutes.

1           **2. Rolovich cannot establish his prima facie case**

2                   **a. Rolovich’s Partial MSJ should be denied because the sincerity**  
3                   **of his asserted religious beliefs is disputed**

4           Rolovich cannot establish the first element of his prima facie case as a matter  
5 of law at this stage, and certainly not by relying on a single, vague, self-serving  
6 declaration. It is well settled that the *sincerity* of a Title VII plaintiff’s religious  
7 beliefs is an issue of fact not properly resolved on a motion for summary judgment.  
8 *See, e.g., United States v. Seeger*, 380 U.S. 163, 185 (1965) (recognizing that “the  
9 threshold question of sincerity” of plaintiff’s religious beliefs “is, of course, a  
10 question of fact”); *EEOC v. Union Independiente de la Autoridad de Acueductos y*  
11 *Alcantarillados de Puerto Rico*, 279 F.3d 49, 56–57 (1st Cir. 2002) (“Credibility  
12 issues such as the sincerity of an employee’s religious belief are quintessential fact  
13 questions [which] should be reserved for the factfinder at trial, not for the court at  
14 summary judgment.”) (cleaned up). Tellingly, Rolovich fails to cite a single case  
15 awarding summary judgment to the *employee* on his prima facie case where the  
16 employer disputed the sincerity of his asserted objections to COVID-19 vaccination.  
17 *See* ECF No. 88 at 14.

18           Here, the record sharply undercuts Rolovich’s self-serving and vague  
19 assertions of a religious objection to vaccination. Rolovich freely and frequently  
20 expressed *secular* concerns about COVID-19 vaccines in late 2020 and early 2021  
21 to friends, family members, and coworkers. *See* SOMF ¶¶ 50–53. Indeed, Rolovich  
22 and his friends communicated constantly—often multiple times per day—  
23 expressing anti-vaccine disinformation, including that the vaccines were

1 “experimental” and a “hoax,” that world leaders who opposed the vaccines had “died  
2 unexpectedly,” that the vaccines were “a bio-weapon,” and that the vaccines enabled  
3 “naked authoritarianism,” “vakseen [sic] fascism,” and “crimes against children.”  
4 Declaration of Spencer Coates (Coates Decl.), Exs. K, L, RR, TT. Following his  
5 separation from WSU, Rolovich continued to voice such secular alarm over the  
6 vaccines, even going so far as to ominously state that those allegedly responsible for  
7 the COVID-19 “vax poison” “will pay . . . and money will not be the currency.”  
8 Coates Decl., Ex. SS.

9 By comparison, in the thousands of pages of written communications about  
10 COVID-19 that Rolovich has produced in discovery, in *none* does he invoke a  
11 *religious* objection to the vaccines. *Id.*, Exs. B–M; SOMF ¶ 52; Declaration of Renée  
12 DiResta, Ex. A (DiResta Rep.) ¶ 50. Given the sheer volume of communications  
13 reflecting Rolovich’s secular vaccine skepticism, a reasonable jury would at least  
14 doubt the sincerity of his realization (the day after he learned of the Proclamation)  
15 that he also had religious objections to the vaccines. *See, e.g., Gardner-Alfred v.*  
16 *Fed. Reserve Bank of N.Y.*, No. 22-CV-1585 (LJL), 2023 WL 6214863, at \*16  
17 (S.D.N.Y. Sept. 25, 2023) (granting summary judgment to employer where plaintiff  
18 “generally opposed the vaccine on non-religious grounds,” “exchanged messages  
19 . . . regarding what were claimed to be the harmful side effects to the vaccine,” and  
20 “viewed the Covid-19 vaccine as something to be avoided”).

21 The timing of Rolovich’s purported epiphany makes it even less credible. *See,*  
22 *e.g., Callahan v. Woods*, 658 F.2d 679, 684 (9th Cir. 1981) (“The existence of a  
23 longstanding philosophical belief which has only recently, and to the claimant’s

1 advantage, taken on theological overtones could certainly give rise to reasonable  
2 suspicion of dissimulation.”). After Pac-12 media day, Rolovich and his agent,  
3 Thayer Evans, discussed getting him paperwork to support a *medical* exemption  
4 from WSU’s vaccination requirement. SOMF ¶ 134–36. When that plan fizzled,  
5 Evans shared with Rolovich and his attorney a religious exemption template from  
6 the National Catholic Bioethics Center (NCBC). *Id.* ¶ 148–49. The NCBC template  
7 states: “if a Catholic comes to an informed and sure judgment in conscience that he  
8 or she should not receive a vaccine, then the Catholic Church requires that the person  
9 follow this certain judgment of conscience and refuse the vaccine.” *Id.* Hours later,  
10 Rolovich went to meet with Father Paul. *Id.* ¶ 150. Only *then* did Rolovich  
11 conveniently “understand his disquiet in terms of Catholic teaching on the moral  
12 conscience.” ECF No. 88 at 12; SOMF ¶ 150.

13 In light of that suspect chronology—and Rolovich’s copious written  
14 communications expressing his medical, scientific, and political objections to the  
15 COVID-19 vaccines—a jury could easily disbelieve that he belatedly “discerned” a  
16 separate religious basis for his longstanding opposition to the vaccines. ECF No. 53  
17 ¶ 24. Indeed, WSU submits that no reasonable jury would find Rolovich’s  
18 conveniently timed religious epiphany to have been sincere. *See, e.g., Moore v.*  
19 *Effectual Inc.*, No. 3:23-CV-05210-DGE, 2024 WL 1091689, at \*9 (W.D. Wash.  
20 Mar. 13, 2024) (granting summary judgment to employer where plaintiff “had  
21 scientific and political objections to the vaccine that he attempted to ‘fit’ to his  
22 religious beliefs in order to potentially qualify for a religious exemption”); *Gardner-*  
23 *Alfred*, 2023 WL 6214863, at \*15–16 (same where plaintiff “solicited the vaccine

1 exemption letter on the eve of the Vaccination Policy and for the purpose of  
2 obtaining an exemption” and “[n]o reasonable jury thus would be able to conclude  
3 that her claimed religious beliefs were anything other than contrived”).<sup>2</sup>

4 In short, Rolovich has not and cannot establish that he is entitled to summary  
5 judgment “as to his prima facie case for the Title VII failure to accommodate claim.”  
6 ECF No. 88 at 2. His Partial MSJ should be denied.

7 **b. As a matter of law, Rolovich’s conscience-based objection does**  
8 **not establish a religious conflict with COVID-19 vaccination**

9 As explained above, Rolovich is not entitled to summary judgment as to his  
10 prima facie case because the *sincerity* of his religious beliefs is a question of fact.  
11 But whether those asserted beliefs establish a *religious* conflict with COVID-19  
12 vaccination is a question of law. *See Mason v. Gen. Brown Cent. Sch. Dist.*, 851 F.2d  
13 47, 51 (2d Cir. 1988) (citing *Wisconsin v. Yoder*, 406 U.S. 205, 215–16 (1972)). And  
14 under the governing law—even assuming *arguendo* Rolovich honestly believes he  
15

16 <sup>2</sup> Certainly, no reasonable jury would credit Rolovich’s asserted religious belief  
17 that “accepting the vaccine will make me complicit in the abortions that produced  
18 the human cell lines from which” the COVID-19 vaccines were supposedly  
19 “derived.” ECF No. 88 at 13. While that language appears in Rolovich’s exemption  
20 request, it is undisputed that Rolovich neither wrote nor edited that request. SOMF  
21 ¶¶ 156–57. And there is no evidence Rolovich ever *mentioned* that particular  
22 objection to anyone, whether in conversation or anywhere in his thousands of pages  
23 of written communications about the vaccines. *Id.* ¶¶ 52–54, 61–62, 66, 71.

1 “had a religious obligation as a Catholic to follow [his] conscience and decline to  
2 take a COVID vaccination,” ECF No. 89-2 ¶ 16—that sweeping conscience-based  
3 objection does not establish an actual religious conflict with vaccination.

4 In the leading pre-pandemic Title VII case on employee vaccination  
5 requirements, the Third Circuit affirmed the dismissal of a former hospital  
6 employee’s complaint because it determined his opposition to the flu vaccine was  
7 not “religious in nature,” despite the employee’s assertion that getting vaccinated  
8 “would violate his conscience as to what is right and what is wrong.” *Fallon v. Mercy*  
9 *Cath. Med. Ctr. of Se. Pa.*, 877 F.3d 487, 492, 494 (3d Cir. 2017). Because the  
10 employee “simply worrie[d] about the health effects of the flu vaccine, disbelieve[d]  
11 the scientifically accepted view that it is harmless to most people, and wishe[d] to  
12 avoid this vaccine,” his objection to the vaccine did not “‘occupy . . . a place parallel  
13 to that filled by God in traditionally religious persons.’” *Id.* at 491–92 (cleaned up)  
14 (quoting *Welsh v. United States*, 398 U.S. 333, 340 (1970)).

15 Consistent with *Fallon*, since the pandemic, dozens of federal courts have  
16 rejected similar conscience-based objections to COVID-19 vaccination  
17 requirements. *See, e.g., Finn v. Humane Soc’y of United States*, No. GLR-23-2107,  
18 2024 WL 1765702, at \*4 (D. Md. Apr. 24, 2024) (dismissing Title VII claim where  
19 plaintiff’s “entire religious exemption request is essentially a statement that her  
20 religion requires that she listen to her conscience and act according to personal  
21 preference”); *Bartholomew v. Washington*, No. 3:23-CV-05209-DGE, 2024 WL  
22 1426308, at \*4 (W.D. Wash. Mar. 26, 2024) (same where objection was based on  
23 belief that “[a]s an individual Christian, and as an expression of your belief, you are

1 commanded to not allow anything to enter your body that violates your conscience”);  
2 *McCarthy v. Boston Med. Ctr.*, No. 22-11886-RGS, 2024 WL 185392, at \*1  
3 (D. Mass. Jan. 17, 2024) (same where “the cited basis for [plaintiff’s] opposition to  
4 vaccination appears to be the dictates of her own conscience, which she maintains  
5 that her religion requires her to follow”); *see also* ECF No. 22 at 30–31; ECF No.  
6 31 at 12–13 n.3. The principle underlying these decisions is that “[a]llowing [a]  
7 [p]laintiff the ability to object to anything that ‘goes against . . . her ‘conscience’  
8 would amount to the type of ‘blanket privilege’ that does not qualify as religious  
9 belief.” *Caruano v. Bayhealth Med. Ctr., Inc.*, 714 F. Supp. 3d 461, 469 (D. Del.  
10 2024) (quoting *Africa v. Pennsylvania*, 662 F.2d 1025, 1031 (1981)).

11 Rolovich’s conscience-based objection is indistinguishable. To be sure, “a  
12 coincidence of religious and secular claims in no way extinguishes the weight  
13 appropriately accorded the religious one.” *Callahan*, 658 F.2d at 684. But  
14 Rolovich’s conscience-based objection to the vaccines does not merely *coincide*  
15 with his health-based and other secular objections; it is entirely *derivative* of them.  
16 Thus, even assuming his conscience-based objection is *sincere*, it does not establish  
17 a *religious* conflict with the vaccine requirement under Title VII, defeating his claim  
18 on the first element of his *prima facie* case.

19 **3. WSU is entitled to summary judgment because it could not**  
20 **accommodate Rolovich without undue hardship**

21 Ultimately, the Court need not even address the *prima facie* elements of  
22 Rolovich’s Title VII claim because WSU is entitled to summary judgment on the  
23 basis of its complete defense of undue hardship.



**a. Title VII’s undue hardship standard**

An “‘undue hardship’ is shown when a burden is substantial in the overall context of an employer’s business.” *Groff v. DeJoy*, 600 U.S. 447, 468 (2023). In assessing undue hardship, a court “must apply the test in a manner that takes into account all relevant factors in the case at hand, including the particular accommodations at issue and their practical impact,” and “in the common-sense manner that it would use in applying any such test.” *Id.* at 470–71. The analysis must also account for the “aggregate effects when multiple employees are granted the same accommodation.” *Together Emps. v. Mass Gen. Brigham Inc.*, 573 F. Supp. 3d 412, 437 (D. Mass. 2021), *aff’d*, 32 F.4th 82 (1st Cir. 2022).

Noneconomic costs, such as an “accommodation’s effect on co-workers,” are relevant to the undue hardship analysis. *Groff*, 600 U.S. at 472. Like other circuits, the “Ninth Circuit has long recognized valid safety concerns as establishing undue hardship.” *White v. Univ. of Washington*, No. 2:22-CV-01798-TL, 2024 WL 1241063, at \*8 (W.D. Wash. Mar. 22, 2024) (citing *Bhatia v. Chevron U.S.A., Inc.*, 732 F.2d 1382, 1384 (9th Cir. 1984) (per curiam)); *see also Doe v. San Diego Unified Sch. Dist.*, 19 F.4th 1173, 1180 (9th Cir. 2021) (“[A]n employee’s request for an exemption from a COVID-19 vaccination mandate can be denied on the ground that . . . such an exemption would pose an undue hardship by . . . increasing the risk of the spread of COVID-19 to other employees or to the public.”) (cleaned up); *EEOC v. GEO Grp., Inc.*, 616 F.3d 265, 273 (3d Cir. 2010) (“A religious accommodation that creates a genuine safety or security risk can undoubtedly constitute an undue



1 hardship . . . .”); EEOC, *Religious Discrimination*, [https://www.eeoc.gov/religious-](https://www.eeoc.gov/religious-discrimination)  
2 discrimination (last visited Oct. 9, 2024) (“An accommodation may cause undue  
3 hardship if it . . . compromises workplace safety.”).

4 **b. Rolovich’s increased risk of contracting and transmitting**  
5 **COVID-19 constitutes an undue hardship**

6 There is no genuine dispute as to the heightened public health risk an  
7 unvaccinated head football coach would have posed in October 2021—at the height  
8 of the Delta surge—to himself and those around him. As a matter of law, an  
9 accommodation that would materially exacerbate the spread of a deadly virus,  
10 particularly during a once-a-century global health crisis, cannot be “reasonable,” and  
11 constitutes an undue hardship under Title VII.

12 The undisputed record establishes that football coaches at WSU—and  
13 especially the head football coach—faced a heightened risk of contracting and  
14 spreading COVID-19 due to their frequent and close in-person contacts. *See* SOMF  
15 ¶¶ 4–8. The head coach routinely works in close proximity to hundreds of  
16 individuals: players, assistant coaches, Athletics Department staff, members of the  
17 media, opposing coaches and players, and others. *Id.* He attends practices, training  
18 sessions, and games, and in each setting interacts closely with others. *Id.* ¶ 4.  
19 Coaches also travel with the team, stay in the same hotel as the team, and eat meals  
20 with the team. *Id.* Before and after games, the head coach has media responsibilities  
21 and gives interviews to the press. *Id.* ¶ 7. The head coach also meets with donors—  
22 in fact, he is usually the most in-demand University employee for donor engagement.  
23 *Id.* ¶¶ 6, 8. In his declaration, WSU’s current head football coach, Jake Dickert,

1 walks through a typical week of his job: he interacts with “perhaps 1,000 or more”  
2 people in a variety of environments, mostly face-to-face and in close proximity.  
3 Declaration of Jacob Dickert (Dickert Decl.) ¶¶ 26–39. No doubt the same was true  
4 for Rolovich, who testified that whenever he encountered his players or football  
5 staff, his leadership strategy was to never “pass them in person without engaging  
6 them.” SOMF ¶ 11.

7 In short, each week an unvaccinated head football coach would have hundreds  
8 or thousands of opportunities to contract COVID-19 while performing his official  
9 duties. And if he were to contract COVID-19, either at work or in his personal life,  
10 he would risk infecting hundreds or thousands of individuals: students, coworkers,  
11 staff, donors, and other members of the WSU community. SOMF ¶¶ 194–95.

12 Rolovich’s unvaccinated status also increased the risk of him missing  
13 practices, training sessions, meetings, and games, if he either contracted COVID-19  
14 or interacted with someone who had. The very fact that Rolovich was unvaccinated  
15 made him more likely to *test* positive for COVID-19—not only because  
16 unvaccinated persons were more susceptible to infection but because of mandatory  
17 testing requirements for *unvaccinated* staff only. Declaration of Dr. Guy Palmer, Ex.  
18 A (Palmer Rep.) ¶ 62. Under EH&S’s “minimum” countermeasures, even a close  
19 contact with someone testing positive would have compelled Rolovich to quarantine  
20 for 14 days—and for *24 days* if the close contact were in his household. SOMF ¶¶  
21 178–79. In the wrong 24-day period, that would have left WSU’s football team  
22 leaderless for one-third of its season. *Id.* ¶ 180. As Chun testifies, “[t]he risk of our  
23 head football coach contracting COVID-19, potentially developing severe disease,

1 and needing to take significant time away from work, would have been seriously  
2 harmful to the football team.” Declaration of Patrick Chun (Chun Decl.) ¶ 69.

3 The heightened public health risk of having an unvaccinated head football  
4 coach in October 2021 is established by the *unchallenged* expert testimony of  
5 WSU’s two scientific experts: Dr. John Lynch, the Associate Medical Director of  
6 Harborview Medical Center and leader of the Medical-Technical Team for  
7 University of Washington Medicine’s COVID-19 Emergency Operations Center;  
8 and, Dr. Guy Palmer, WSU’s Chief Science Advisor for its COVID-19 response and  
9 a world-renowned expert in vaccines and zoonotic diseases (those that, like COVID-  
10 19, spread between humans and animals). Their findings include that: (1) numerous  
11 public health authorities at the time of WSU’s accommodation decision had  
12 concluded that the COVID-19 vaccines were safe and effective at reducing the  
13 transmissibility of the virus and the likelihood of severe disease, hospitalization, and  
14 death (particularly against the Delta variant dominant in fall 2021), *see* SOMF  
15 ¶¶ 194–95; (2) vaccination was the single most effective strategy for mitigating the  
16 spread of the virus, *id.* ¶ 194; and (3) other countermeasures such as masking (which  
17 was already required of Rolovich, but often disregarded) or frequent COVID-19  
18 testing would not have sufficiently mitigated the risk of unvaccinated coaches  
19 spreading the virus, *id.* ¶¶ 194–95.

20 Based on those findings, Dr. Lynch concludes that “allowing Rolovich and  
21 seven other football coaches or professionals to continue working in their positions  
22 unvaccinated in the fall of 2021 would have significantly increased the risk of their  
23 contracting and transmitting COVID-19 to . . . other football coaches, Athletics

1 Department staff, student-athletes, members of the media, WSU donors, and others.”  
2 *Id.* ¶ 194. And Dr. Palmer—who wholly agrees with Dr. Lynch’s opinions, *id.*  
3 ¶ 195—concludes that “granting accommodations to Mr. Rolovich and the other  
4 coaches would have resulted in a significantly greater risk of them getting infected  
5 with COVID-19 and transmitting it to others.” *Id.*

6 Rolovich did not disclose any scientific experts. Therefore, Dr. Lynch’s and  
7 Dr. Palmer’s detailed findings and conclusions are unrebutted and must be treated  
8 as undisputed for the purposes of summary judgment. *See, e.g., Tawnsaura Grp.,*  
9 *LLC v. Maximum Human Performance, LLC*, No. CV 12-07189 SJO (AGRx),  
10 2013 WL 11011698, at \*6 (C.D. Cal. Sept. 12, 2013) (“Because Plaintiff has not  
11 attempted to rebut the factual assertions made by Defendant’s expert, Plaintiff has  
12 failed to show that there is a genuine dispute as to [those facts]”). Accordingly, there  
13 is no genuine dispute that, had WSU allowed Rolovich and seven other football  
14 coaches and staff to continue working in their positions unvaccinated, it would have  
15 materially increased the risk of their contracting and spreading COVID-19 to  
16 students, coworkers, donors, or other members of the WSU community. This alone  
17 creates an undue hardship. *Doe*, 19 F.4th at 1180.

18 In a wide variety of employment contexts, many courts in this Circuit have  
19 granted summary judgment on undue hardship based on the increased risk of  
20 unvaccinated employees infecting coworkers or others with COVID-19. *See, e.g.,*  
21 *Mohamed v. Full Life Care*, No. C22-1010-KKE, 2024 WL 4371584, at \*2 (W.D.  
22 Wash. Oct. 2, 2024) (mental health services coordinator); *Lavelle-Hayden v. Legacy*  
23 *Health*, --- F. Supp. 3d ----, No. 3:22-CV-01752-IM, 2024 WL 3822712, at \*2–3,

1 \*15 (D. Or. Aug. 14, 2024) (phone operator, safety security officer, and other jobs  
2 involving “direct, in-person contact with patients and coworkers”); *Slater v.*  
3 *Behavioral Health Res.*, No. 23-5270 RJB, 2024 WL 4290289, at \*1, \*5 (W.D.  
4 Wash. Sept. 25, 2024) (office specialist); *MacDonald v. Or. Health & Sci. Univ.*,  
5 No. 3:22-CV-01942-IM, 2024 WL 3316199, at \*2, \*12 (D. Or. July 5, 2024) (nurse);  
6 *Petersen v. Snohomish Reg’l Fire & Rescue*, No. C22-1674 TSZ, 2024 WL 278973,  
7 at \*1, \*7 (W.D. Wash. Jan. 25, 2024) (firefighters); *Bordeaux v. Lions Gate Ent.,*  
8 *Inc.*, 703 F. Supp. 3d 1117, 1121, 1135–36 (C.D. Cal. 2023) (television actor).

9 Courts in other circuits have also found undue hardship on the same grounds.  
10 *See, e.g., Howe v. Mass. Dep’t of Corr.*, No. 4:22-CV-40119-MRG, 2024 WL  
11 3536830, at \*1, \*6 (D. Mass. July 25, 2024) (corrections officer); *Antredu v. Mass.*  
12 *Dep’t of Youth Servs.*, --- F. Supp. 3d ----, No. CV 22-12016-WGY, 2024 WL  
13 1539725, at \*1, \*5 (D. Mass. Apr. 9, 2024) (juvenile offender case worker); *Kushner*  
14 *v. NYC Dep’t of Educ.*, No. 22-CV-5265 (DLI) (VMS), 2023 WL 6214236, at \*1,  
15 \*5 (E.D.N.Y. Sept. 25, 2023) (public school teacher); *Conner v. Raver*, No. 22-CV-  
16 08867-JST, 2023 WL 5498728, at \*1, \*6 (N.D. Cal. Aug. 24, 2023) (executive  
17 assistant). In all these cases, the critical factor was that the employee’s “unvaccinated  
18 presence would have imposed ‘substantial increased costs in relation to the conduct  
19 of [the employer’s] particular business’ by creating a health and safety risk.”  
20 *Kushner*, 2023 WL 6214236, \*5 (quoting *Groff*, 600 U.S. at 470).

21 WSU is entitled to summary judgment for the same reason. Rolovich’s job as  
22 head football coach undisputedly required frequent interactions with students,  
23 coworkers, donors, and others. Unrebutted expert testimony establishes that his

1 unvaccinated status materially increased the risk of him contracting and spreading  
2 COVID-19, and that no other possible accommodation would have negated that risk.  
3 Thus, accommodating Rolovich—and the seven other football employees who  
4 requested accommodations—would have imposed an undue hardship on WSU.  
5 Summary judgment is warranted on this basis alone.

6 **c. The economic costs of accommodating Rolovich constitute an**  
7 **undue hardship**

8 Accommodating Rolovich would have also forced WSU to incur significant  
9 financial costs: (i) providing separate travel accommodations to allow for proper  
10 distancing from the rest of the team and staff; (ii) lost revenue resulting from  
11 canceled games in the event of another COVID-19 outbreak on the football team;  
12 and (iii) the loss of significant contributions from donors who expressed  
13 disappointment and anger at WSU for compromising community safety by allowing  
14 Rolovich to continue coaching while unvaccinated.

15 ***i. Travel costs***

16 During the football season, the team travels extensively by charter plane and  
17 charter bus. To protect the health and safety of student-athletes and football staff, at  
18 a minimum Rolovich and the other unvaccinated football coaches would have been  
19 required to maintain six feet of distance from others. Palmer Rep. ¶ 59; Chun Decl.  
20 ¶ 78, Ex. T. Distancing would not have been possible on flights and buses, so WSU  
21 would have had to charter separate flights and buses to accommodate the  
22 unvaccinated coaches—just as EH&S’s “minimum” countermeasures provided. *See*  
23 *SOMF* ¶ 178; Palmer Rep. ¶ 59; Chun Decl. ¶ 84.

1 The cost to charter separate flights would have been approximately \$28,000  
2 per game, totaling \$168,000 for all six away games. SOMF ¶ 196. Separate buses  
3 would have totaled approximately \$28,500 for the season. *Id.* ¶ 197. These costs,  
4 totaling approximately \$196,500, alone constitute an undue economic hardship. *See*  
5 *Bordeaux*, 703 F. Supp. 3d at 1137 (\$300,000 to accommodate actor on set would  
6 be undue hardship for major international entertainment company).

7 *ii. Canceled games*

8 Additionally, allowing Rolovich and the other unvaccinated coaches to  
9 continue working would have risked significant lost revenue from ticket sales and  
10 media rights due to canceled games. It is undisputed that unvaccinated coaches  
11 would have significantly increased the risk of a COVID-19 outbreak among the  
12 football team. SOMF ¶¶ 194–95; Chun Decl. ¶ 82. This was not a remote  
13 possibility—during the 2020 season, one COVID-19 outbreak forced the team to  
14 cancel two games. SOMF ¶ 31.

15 WSU’s economic expert reviewed revenue from ticket sales for fiscal years  
16 2018 through 2020 and conservatively estimated the lost revenue from ticket sales  
17 alone from one canceled game at \$1.25 million. SOMF ¶ 198. If a bowl game had  
18 been canceled, lost ticket sale revenue would have reached approximately \$1.8  
19 million. *Id.* ¶ 199.

20 The economic impact of canceled games also encompasses lost media-rights  
21 revenues. *Id.* ¶ 200. Media-rights revenues—those realized from the Pac-12  
22 conference’s contracts with broadcasters—are the largest income source for WSU’s  
23



1 football program. *Id.* WSU’s economic expert conservatively estimated media-rights  
2 revenue lost from one canceled game at approximately \$170,000. *Id.* ¶ 201.

3 Overall, then, if WSU had been forced to cancel one regular season game and  
4 one bowl game, it would have incurred over \$3 million in losses from ticket sales  
5 and media-rights revenue. SOMF ¶¶ 198–201. If six games and a bowl game were  
6 canceled, losses would have reached \$10 million. *Id.*

7 Such losses are analogous to the undue hardship found in *Bordeaux*. There the  
8 court specifically considered the costs of temporarily shutting down production of a  
9 television show—which the actor plaintiff’s unvaccinated status made more likely—  
10 and determined that projected losses of \$1.5 to 3 million would constitute an undue  
11 hardship to the production company. 703 F. Supp. 3d at 1128, 1137, 1139–40. The  
12 same reasoning applies here, particularly where WSU had already suffered financial  
13 losses from games canceled due to COVID-19 outbreaks during the 2020 season.  
14 SOMF ¶ 29–33. These millions of dollars in potential losses would undoubtedly be  
15 “substantial” in the context of WSU’s business. *See Groff*, 600 U.S. at 471.

16 ***iii. Lost donations***

17 Accommodating Rolovich also risked the loss of significant revenue from  
18 WSU donors. Donor contributions to the WSU Athletics Department generally range  
19 from \$2.3 to 3.8 million each year. SOMF ¶ 204. Once Rolovich’s vaccine refusal  
20 became publicly known, many donors—including several that had previously given  
21 millions to WSU—expressed anger and disappointment that Rolovich was  
22 endangering the WSU community. *Id.* ¶¶ 79–80, 205–06. Multiple major donors  
23 explicitly threatened to withhold further giving based on Rolovich’s vaccine stance,



1 including one donor who canceled a planned \$1 million bequest to the university.  
2 *Id.* ¶ 206.

3 In sum, the economic burdens of accommodating Rolovich were substantial.  
4 This, too, conclusively establishes undue hardship.

5 **d. Other burdens would have imposed an undue hardship**

6 In assessing undue hardship, courts consider not just directly quantifiable  
7 economic costs, but also non-economic harms like reputational and institutional  
8 damage. *Lee v. Seasons Hospice*, 696 F. Supp. 3d 572, 579–80 (D. Minn. Sept. 29,  
9 2023) (“reputational damage” can “create an undue hardship”); *Together Emps.*, 573  
10 F. Supp. 3d at 435 (same). Undisputed facts show that accommodating Rolovich  
11 would have damaged WSU’s football program and reputation.

12 **First**, Rolovich’s unvaccinated status limited his ability to recruit high school  
13 and junior college players, a critical requirement for the football program’s long-  
14 term success. SOMF ¶ 5; Declaration of Anne McCoy (McCoy Decl.) ¶ 17; Chun  
15 Decl. ¶ 17. Indeed, Rolovich’s limited ability to recruit was apparent early in the  
16 2021 recruiting cycle; his recruiting activities in 2020 and 2021 lagged far behind  
17 those of his successor over a similar time period. SOMF ¶¶ 69–70; Declaration of  
18 Brad Corbin ¶¶ 6–9.

19 This discrepancy is at least partially attributable to COVID-19 restrictions in  
20 2021, including vaccination requirements. In 2021, many state and local  
21 jurisdictions (including some where Rolovich had conducted his few recruiting visits  
22 the previous year) mandated masking and social distancing—measures that  
23

1 Rolovich had proven incapable of consistently honoring. SOMF ¶ 68; *see infra*  
2 subsection II.B.3.e. Several jurisdictions also restricted or barred unvaccinated  
3 visitors from accessing school facilities. SOMF ¶ 68; McCoy Decl., Exs. D–E.

4 With these restrictions, Rolovich’s limited ability to meet recruits in their  
5 homes or schools would have hindered the football program’s long-term success—  
6 a hardship compounded by Rolovich being the only unvaccinated Pac-12 head coach  
7 in 2021, putting him at an immediate conference disadvantage. *See* SOMF ¶ 82;  
8 Chun Decl. ¶ 55. Nor did Rolovich demonstrate the ability or capacity to bridge the  
9 gap by relying on phone or video recruiting, which is less effective than in-person  
10 recruiting. McCoy Decl. ¶¶ 17, 49–51; Chun Decl. ¶ 64; Dickert Decl. ¶ 20.  
11 Furthermore, after any recruiting trips, Rolovich would have had to quarantine for  
12 five days upon his return to campus because he was unvaccinated, and thus would  
13 have been unable to participate in practices and other football activities. SOMF ¶ 67.  
14 Such absences would have hindered team development. Chun Decl. ¶ 40, Ex. A.

15 ***Second***, accommodating Rolovich would have further damaged WSU’s  
16 reputation with donors, fans, alumni, and the public at large. Meeting face-to-face  
17 with donors, for instance, is critical to WSU’s Athletics program, and Rolovich  
18 would have been unable to accomplish this effectively while unvaccinated in 2021.  
19 SOMF ¶ 6; Chun Decl. ¶¶ 23, 50, 53; McCoy Decl. ¶ 19. Because of donor uproar  
20 and other local health restrictions on the unvaccinated, WSU had to cancel a number  
21 of previously scheduled in-person donor events for Rolovich, including the “Kickoff  
22 with the Cougs” event on August 26, 2021, multiple donor dinners, and the Coaches’  
23 Luncheon the Friday before home games. SOMF ¶ 81. Given the many donors

1 already curbing their giving, Rolovich's inability to cultivate new donors through  
2 in-person interactions would likely have compounded the economic challenges  
3 facing WSU.

4 Similarly, Rolovich's ability to interact with fans, the media, and the football  
5 team itself in 2021 was significantly limited because of his unvaccinated status, and  
6 would have continued to be for the remainder of the 2021 season. Being  
7 unvaccinated, Rolovich was barred from attending Pac-12 media day, a signature  
8 event for generating excitement about the upcoming season. SOMF ¶¶ 72–74, 82;  
9 Chun Decl. ¶¶ 45–46. For the same reason, Rolovich could not attend the Coaches'  
10 Show broadcast in person and had to conduct that weekly interview by Zoom, which  
11 reduced fan attendance. Chun Decl. ¶ 70. Worse, the distancing, masking, testing,  
12 and quarantining requirements that applied only to unvaccinated persons caused  
13 Rolovich to miss numerous team meetings and constrained his interactions with his  
14 coaching staff and team. Chun Decl. ¶ 66; Dickert Decl. ¶ 44.

15 *Finally*, there is no reasonable dispute that Rolovich's announcement of his  
16 unvaccinated status in July 2021 was met with a large—and overwhelmingly  
17 negative—public reaction that reflected poorly on WSU.<sup>3</sup> SOMF ¶¶ 79–80, 205.  
18 After Rolovich's announcement, WSU was bombarded by hundreds of messages  
19 from donors, students, parents, alumni, and concerned Washingtonians outraged by  
20

21 <sup>3</sup> Soon after his announcement, one metric used regularly by WSU to survey  
22 public sentiment reported that Rolovich's vaccine stance was the single largest  
23 driver of negative WSU coverage in years. Bones Rep. at 34; Coates Decl., Ex. EE.

1 Rolovich's anti-vaccine stance and public flouting of public safety measures. SOMF  
2 ¶¶ 80, 205; Chun Decl. ¶¶ 49–53; Declaration of Kirk Schulz (Schulz Decl.) ¶¶ 25–  
3 28; Declaration of Adam Ganders ¶ 5; Declaration of Mitchell Straub ¶¶ 10–15.  
4 Many questioned how a world-class scientific research university with a medical  
5 school, a global health school, and significant science-based research funding could  
6 credibly claim to prioritize community health and safety while employing an  
7 unvaccinated head football coach. Schulz Decl. ¶¶ 22, 36. These complaints  
8 continued, and in many cases worsened, as the football season began and thousands  
9 of WSU fans witnessed Rolovich frequently remove his mask during televised  
10 games in contravention of Pac-12, WSU, and local health requirements. SOMF  
11 ¶¶ 125–26; McCoy Decl. ¶¶ 30, 54; Chun Decl. ¶ 67. WSU had ample reason to  
12 believe that continuing to employ Rolovich would have increased the reputational  
13 and institutional damage it had already suffered.

14 In sum, accommodating Rolovich as head football coach would have imposed  
15 an undue hardship on WSU four times over—by damaging its community's health  
16 and safety, its finances, its football team, and its reputation.<sup>4</sup> Because undue hardship  
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19 <sup>4</sup> WSU is not alone in appreciating the undue hardship in having an unvaccinated  
20 head football coach, as evidenced by Rolovich's admitted inability to secure a  
21 coaching job with at least four other universities—the University of Nevada, the  
22 University of Hawaii, and two private Christian universities in Texas—because he  
23 was unvaccinated. SOMF ¶¶ 213–15.

1 is a complete defense to Rolovich's WLAD and Title VII claims, WSU is entitled to  
2 summary judgment on those claims.

3 **e. WSU correctly determined that masking and distancing were**  
4 **not reasonable accommodations for Rolovich**

5 Rolovich claims that he "could have been accommodated" by "requiring  
6 countermeasures to ensure his safety and others he may be in contact with," such as  
7 masking and distancing. ECF No. 53 ¶ 106. According to Rolovich, he "successfully  
8 performed his job as head coach while following countermeasures required of him  
9 by WSU because of his vaccination status." *Id.* ¶ 107. The undisputed facts refute  
10 both those assertions.

11 **First**, as Dr. Lynch's and Dr. Palmer's unrebutted scientific findings establish,  
12 "[v]accination was and is the single best tool available for stemming the spread of  
13 COVID-19 and its variants," and alternative mitigation measures like masking  
14 ("whether viewed in isolation or together") would not have been "an adequate  
15 substitute for vaccination." SOMF ¶¶ 194, 195.

16 **Second**, not only were countermeasures like masking and distancing  
17 insufficient to mitigate the risk of Rolovich contracting and spreading COVID-19,  
18 it is undisputed that Rolovich could not do his job effectively while following them.  
19 *See, e.g., Bordeaux*, 703 F. Supp. 3d at 1127 (undue hardship where "the nature of  
20 Plaintiff's work required close, unmasked contact with other[s]"). Despite Pac-12  
21 and WSU requirements that unvaccinated coaches wear masks during games and  
22 practices, in his deposition Rolovich admitted to repeatedly removing his to  
23 effectively communicate with players, coaches, and officials. SOMF ¶¶ 120–26.



1 Indeed, in six of the seven games he coached in 2021, Rolovich was caught on  
2 camera flagrantly removing his mask—usually in close proximity to other people:



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12 *Washington State head coach Nick Rolovich speaks with an official, not pictured, during the*  
13 *second half of an NCAA college football game against Utah State, Saturday, Sept. 4, 2021, in*  
14 *Pullman, Wash. (AP Photo/Young Kwak)*



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24 DEF.'S COMBINED CROSS-MSJ & RESP.  
25 TO PLF.'S MOT. FOR PARTIAL SJ - 31  
Case No. 2:22-cv-00319-TOR

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24 DEF.'S COMBINED CROSS-MSJ & RESP.  
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Coates Decl., Ex. UU.

DEF.'S COMBINED CROSS-MSJ & RESP.  
TO PLF.'S MOT. FOR PARTIAL SJ - 33  
Case No. 2:22-cv-00319-TOR

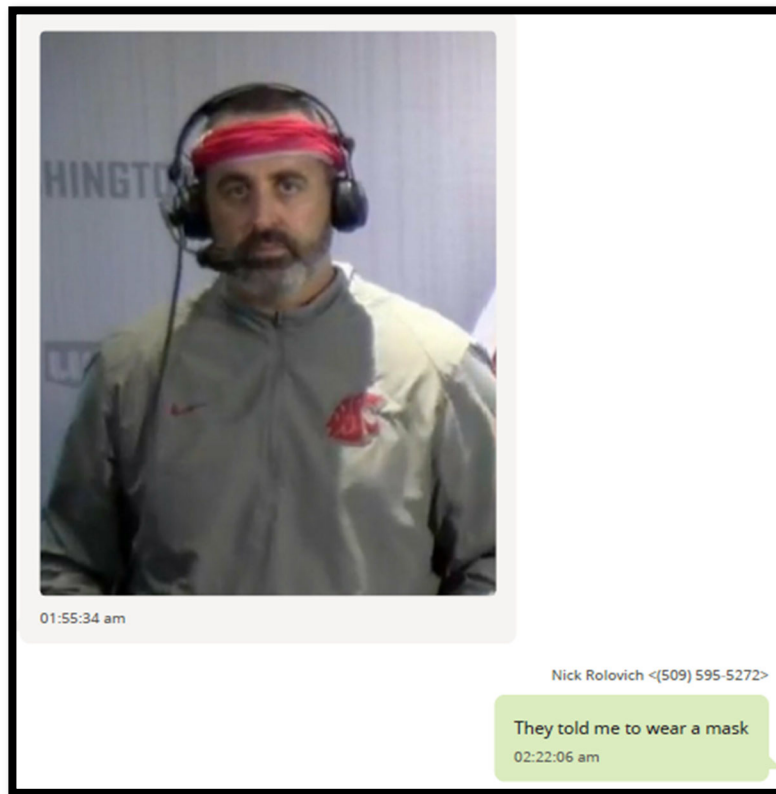
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1 In his deposition, Rolovich justified these—and thirteen more recorded mask-  
2 removals—as necessary for communication with players, coaches, or officials.  
3 SOMF ¶¶ 127–29. Rolovich testified that removing his mask was necessary “to  
4 make sure they heard me” in a noisy “football stadium with 30,000 people.” *Id.*  
5 ¶ 129. Rolovich explained that unmasking was not only necessary to “un-muffle  
6 [his] voice,” but also to “mak[e] sure [players were] able to understand body  
7 language of the importance of whatever I was communicating,” and to allow them  
8 to “read[] lips” when he was “sending in plays and/or information.” *Id.* Rolovich  
9 further justified his actions by arguing that masks reduced oxygen flow and  
10 exacerbated the “party headaches” he had from yelling during games. *Id.* ¶ 131.

11 Rolovich’s inability to wear a mask continuously while coaching is not  
12 surprising. It is undisputed that a head football coach must speak frequently during  
13 games, often at loud volumes, in close proximity to dozens of other players, coaches,  
14 and officials. *Id.* ¶ 4. Because Rolovich admitted he had to remove even his cloth  
15 face covering to be heard, wearing an N95 respirator (as EH&S’s memo prescribed)  
16 would undoubtedly have proven even more cumbersome. *Id.* ¶¶ 176–77. But WSU  
17 could not reasonably accommodate a coach who needed to violate state masking  
18 law, Pac-12 rules, or WSU’s own safety requirements to do his job effectively. *See*  
19 *Trueblood v. Valley Cities Counseling & Consultation*, No. C23-0269JLR, 2024 WL  
20 3965926, at \*13 (W.D. Wash. Aug. 28, 2024) (“Even a ‘danger’ of violating the law  
21 suffices to show undue hardship.”) (quoting *Berry v. Dep’t of Soc. Servs.*, 447 F.3d  
22 642, 655 (9th Cir. 2006)).

1       **Third**, Rolovich’s statements show that he not only found masking  
2 impracticable during games—but objectionable as a matter of principle. Even *before*  
3 the Proclamation, Rolovich was lackadaisical at best, and often openly contrarian,  
4 about masking rules. McCoy Decl. ¶ 27; Chun Decl. ¶ 33. In 2020, Rolovich openly  
5 mocked WSU’s request that he wear a mask during media interviews; when a  
6 colleague texted a picture of Rolovich wearing his mask on his forehead while on  
7 set, Rolovich joked, “They told me to wear a mask”:



19 Coates Decl., Ex. P.

20       Rolovich’s hostility to masks only intensified after vaccines became available.  
21 During a donor trip to Seattle in May 2021, when Washington announced that  
22 *vaccinated* persons could remove their masks in public, Rolovich promptly removed  
23

1 his in a hotel lobby, and proceeded to dine maskless with several major donors  
2 without informing them he was unvaccinated. SOMF ¶¶ 111–14. At one wine bar,  
3 Rolovich misled staff to gain entry when asked if he was vaccinated. *Id.* ¶¶ 115–16.  
4 Rolovich then removed his mask, stayed for an hour, and posed for a maskless  
5 picture with a WSU alumna who worked at the wine bar (and was entirely unaware  
6 of Rolovich’s unvaccinated status):



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18 *Id.* ¶ 116; Kennedy Decl., Ex. A.

19 On July 17, 2021, when state law still required unvaccinated persons to wear  
20 face coverings in public, Rolovich was photographed at an indoor football game not  
21 only unmasked, but while posing for photos and blowing through a vuvuzela:  
22  
23



SOMF ¶ 118; Chun Decl., Exs. L (cicle added), M.

Rolovich's position on masks—as well as vaccination—is summarized succinctly in this text message he sent on July 11, 2021:



Coates Decl., Ex. M.

DEF.'S COMBINED CROSS-MSJ & RESP.  
TO PLF.'S MOT. FOR PARTIAL SJ - 37  
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1 The record is replete with other examples of both Rolovich's noncompliance  
2 with and obvious disagreement with masking as a COVID-19 safety measure,  
3 including his deposition testimony acknowledging his "concern [with] the  
4 detriments of masking to your general health." Coates Decl., Ex. A at 127:16–17;  
5 SOMF ¶¶ 109, 119, 209–11, 215. Simply put, Rolovich's longstanding and  
6 volitional noncompliance with masking rules showed that he could not—or would  
7 not—fulfill his coaching duties while distanced and without removing his mask.

8 **C. WSU Is Entitled to Summary Judgment on the Breach of Contract Claim**

9 Rolovich's claim for breach of contract also fails as a matter of law. ECF No.  
10 53 ¶¶ 98–111. This Court has already ruled that "Plaintiff's breach of contract claim  
11 rests on the determination of whether Plaintiff's exemption and accommodation  
12 would have imposed an undue hardship," and is "appropriately resolved at summary  
13 judgment." ECF No. 33 at 27–28. Because Rolovich did not have a bona fide  
14 religious belief that conflicted with an employment policy and because  
15 accommodating Rolovich would have imposed an undue hardship, WSU had just  
16 cause for termination, and his contract claim accordingly fails.<sup>5</sup>

17 **D. WSU Is Entitled to Summary Judgment on the Wage-Withholding Claim**

18 Summary judgment is also warranted on Rolovich's wage-withholding claim,  
19 whether it arises under RCW 49.52 or RCW 49.48. ECF No. 53 ¶¶ 112–17. As this  
20 Court confirmed, RCW 49.52 claims are not actionable where a "bona fide" dispute  
21

22 <sup>5</sup> Rolovich's contract claim also fails for the additional reasons explained in  
23 WSU's Motion to Dismiss. *See* ECF No. 22 at 49–51; ECF No. 31 at 24–27.



1 exists over whether all or a portion of the wages must be paid. ECF No. 51 at 7.  
2 Accordingly, violations are typically found only “where an employer consciously  
3 withholds a quantifiable and undisputed amount of accrued pay,” such as a failure  
4 to pay wages or issue regular paychecks. *Wright v. Belfor USA Group*, No. C24-  
5 0907-JCC, 2024 WL 3917157, at \*4 (W.D. Wash. Aug. 22, 2024) (citations  
6 omitted). Indisputably, WSU paid Rolovich for the pay periods in which he actually  
7 worked. SOMF ¶ 189. And the record is clear that WSU had a “bona fide dispute”  
8 over its obligation to pay Rolovich liquidated damages—because it rightly believed  
9 it had just cause to terminate his employment. That alone defeats Rolovich’s RCW  
10 49.52 claim. *See, e.g., Garrison v. Merch. & Gould, P.C.*, No. 09-CV-1728-JPD,  
11 2011 WL 887749, at \*10 (W.D. Wash. Mar. 10, 2011) (granting summary judgment  
12 for employer that “acted on its genuine belief that it was not obligated to pay  
13 [plaintiff] additional compensation under the contract”); *Zuccaro v. MobileAccess*  
14 *Networks, Inc.*, No. C11-272 MJP, 2012 WL 261342, at \*4 (W.D. Wash. Jan. 30,  
15 2012) (“genuine question” as to contractual requirement was sufficient to defeat  
16 wage-withholding claim).

17 Any claim for wage theft under RCW 49.48 fares no better. ECF No. 53  
18 ¶¶ 121–24. To prevail on this claim, Rolovich cannot simply point to damages  
19 associated with his other claims; he must allege that WSU “did not pay [him] for all  
20 hours worked before [he was] placed on leave or illegally deducted an amount from  
21 [his] paychecks.” *Zimmerman v. PeaceHealth*, 701 F. Supp. 3d 1099, 1117 (W.D.  
22 Wash. 2023). Rolovich cannot establish any right to liquidated damages because he  
23 was rightly fired for just cause, as explained above. And because WSU undisputedly

1 did not withhold any wages from Rolovich for the pay periods when he actually  
2 worked for WSU, his claim fails as a matter of law.

3 **IV. CONCLUSION**

4 WSU respectfully requests that the Court enter summary judgment in WSU's  
5 favor on all claims, and deny Rolovich's Partial MSJ.

6  
7 I certify that this memorandum contains 9,140 words, in compliance with the  
8 Court's Order of September 18, 2024, ECF No. 86.

9 DATED this 14th day of October, 2024.

10  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 14th day of October, 2024, I electronically filed the foregoing document with the Clerk of the United States District Court using the CM/ECF system which will send notification of such filing to all parties who are registered with the CM/ECF system.

DATED this 14th day of October, 2024.

  
Erica Knerr, Legal Assistant